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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION IX**  
75 Hawthorne Street  
San Francisco, California 94105-3901

Via Federal Express

To Addressees: See Attached List

**URGENT LEGAL MATTER**

Re: CERCLA Order 98-12A pursuant to 42 U.S.C. Section 9606  
(Amending UAO 98-12)  
PRC Patterson Superfund Removal Site  
13331 Highway 33  
Patterson, California

Dear Sir or Madam:

The United States Environmental Protection Agency ("EPA") hereby issues the enclosed Amended Unilateral Administrative Order 98-12A pursuant to Section 9606 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9606, to prevent or mitigate the imminent and substantial endangerment to human health, or welfare or the environment posed by the PRC Patterson facility. The Amended Order requires that you take immediate action to prevent and contain any release or potential release of hazardous substances and materials from the PRC Patterson facility.

This Order amends a previously issued EPA Unilateral Administrative Order (Docket # 98-12) pursuant to which a response action at the site is already in progress. This response action is being performed by a group of Respondents to the Original Order, known as the Patterson Environmental Response Trust ("the Trust"). As a New Respondent, you will be offered an opportunity to participate in the response action as a member of the Trust, or to make a cash settlement with the Trust in order to fulfill your obligations under the Amended Order.

Please note the following important deadlines contained in the Amended Order. The Effective Date of the Amended Order is November 30, 1999. A meeting will be held at 10AM on December 9, 1999 at EPA's Region 9 office in San Francisco for respondents to raise any questions or concerns they may have about the Amended Order and its applicability. By December 28, 1999 all New Respondents to the Amended Order will be required to notify EPA of their intention to comply with the Amended Order. Details on each of these deadlines are contained within the text of the Amended Order.

If you have any technical questions regarding the Amended Order, please contact John Jaros at (415) 744-2316 or Richard Martyn at (415) 744-2288. For any legal questions, please contact Jeanne Elias at (415) 744-1317.

Sincerely,

A handwritten signature in black ink that reads "Keith Takata" followed by a horizontal flourish.

Keith Takata, Director  
Superfund Division

Enclosure: Amended Unilateral Administrative Order CERCLA 98-12A

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX

IN THE MATTER OF: )  
 )  
See List of Parties )  
identified in Attachment 1 )  
 ) U.S. EPA Docket No. 98-12A  
 )  
 ) AMENDED UNILATERAL  
 ) ADMINISTRATIVE ORDER  
 ) FOR PERFORMANCE  
Proceeding Under Section 106(a) ) OF REMOVAL ACTION  
of the Comprehensive Environmental )  
Response, Compensation and Liability) AMENDING UAO NO.98-12  
Act of 1980, 42 U.S.C. § 9606(a) ) Issued 8/12/98  
 )  
\_\_\_\_\_)

I. AUTHORITY

This Amended Unilateral Administrative Order ("Amended Order") is issued on this date pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §9606(a), as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499 ("CERCLA"). The President delegated this authority to the Administrator of the United States Environmental Protection Agency ("EPA" or "Agency") by Executive Amended Order 12580, January 23, 1987, 52 Fed. Reg. 2923, and further delegated it to the Assistant Administrator for Solid Waste and Emergency Response

and the Regional Administrators by EPA Delegation Nos. 14-8-A and 14-14-C. This authority has been redelegated to the Director, Hazardous Waste Division, EPA, Region 9 ("Director") by Region 9 Delegations 1290.41 and 1290.42.

## II. PARTIES BOUND

1. This Amended Order shall apply to and be binding upon all parties listed in Attachment 1 to this Amended Order, including "Original Respondents" and "New Respondents" (collectively "Respondents"), and their agents, successors and assigns. No change in ownership or operational status will alter Respondents' obligations under this Amended Order. Notwithstanding the terms of any contract or agreement, Respondents are responsible for compliance with this Amended Order and for ensuring that their employees, contractors, and agents comply with this Amended Order. Respondents shall provide a copy of this Amended Order to all contractors, subcontractors, and consultants which are retained by Respondent(s) to perform the work required by this Amended Order, within five (5) days of retaining their services.

2. Respondents may not convey any title, easement, or other interest they may have, either individually or collectively, in any property comprising the Site, as the term

"Site" is defined below, without a provision permitting the continuous implementation of the provisions of this Amended Order. Any Respondent wishing to transfer any title, easement, or other interest it may have in any property comprising the Site shall provide a copy of this Amended Order to any subsequent owner(s) or successor(s) before any ownership rights are transferred. Any such Respondent shall advise EPA six (6) months in advance of any anticipated transfer of interest.

### III. DEFINITIONS

3. Unless otherwise expressly provided herein or in the Definitions in "Attachment 2" affixed hereto, terms used in this Amended Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever the terms listed below are used in this Amended Order, or in the Attachments affixed hereto and incorporated hereunder, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments & Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq.

"Amended Unilateral Order" or "Amended Order" shall mean this Amended Unilateral Administrative Order, EPA docket number 98-12A, and all attachments hereto. In the event of a conflict between this Amended Unilateral Order and any attachment, this Amended Unilateral Order shall control.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300.

"Original Order" shall mean Unilateral Administrative Order EPA docket 98-12 issued on August 12, 1998.

"Response actions" shall be those specific work items each Respondent is required to perform at the Site pursuant to this Amended Unilateral Order, as set forth in Section VIII C.

"Respondents" shall mean those entities listed in Attachment 1 of this Amended Order, both individually and collectively, encompassing both "Original Respondents" and "New Respondents".

#### IV. FINDINGS OF FACT

4. a) The PRC Patterson site (the "Site") is located at 13331 North Highway 33 in Patterson, Stanislaus County, California. The approximately 20-acre Site is surrounded primarily by agricultural land. The City of Patterson is located approximately 2 miles south of the Site. There are numerous irrigation canals located in the immediate vicinity of the Site. Several of these canals drain into Del Puerto Creek, which flows within a mile of the Site. Del Puerto Creek flows into the San Joaquin River. A Site map is affixed as Attachment 3.

b) Facility operations were commenced in the early 1980's by Recycletron Oil Inc., ("RCI"), a California corporation doing business as Refineries Services. RCI was a recycler of waste oil and oily water. In 1989, Recycletron Oil Inc., merged with Petroleum Recycling Corporation, a California corporation. Shortly thereafter, a wholly separate California corporation, PRC Patterson ("PRC") was formed. The Site operated continuously until sometime in 1997.

c) On October 31, 1997 EPA received a verbal request for assistance at the Site from DTSC. EPA, in conjunction with DTSC, conducted a preliminary inspection of the facility on that date and made the following observations: The Site had been abandoned



and general site conditions had begun to deteriorate. The facility was not secured and had been heavily vandalized. Many tanks and containers appeared to be unstable due to their age and deteriorating condition. Several of these tanks were leaking and one of the larger tanks reportedly had failed catastrophically in the past.

d) On November 18, 1997, following the receipt of a written request for assistance from DTSC, EPA initiated an emergency response action to stabilize these unsafe and dangerous conditions which presented an endangerment to the public health, welfare, and environment. EPA provided round-the-clock Site security, upgraded the perimeter fence and berm, and pumped down the liquid level in several storage tanks which were either overflowing or on the verge of overflowing.

e) From December 1 through December 6, 1997, EPA conducted an assessment of the Site. Results of sampling and analyses conducted during this assessment are presented in the March 1998 report entitled "Enviro-pur/PRC Patterson Oil Recycling Facility Removal Assessment" prepared by Ecology and Environment. The following is a brief inventory of items and materials then stored onsite:

1) Numerous process tanks, storage tanks, pressure tanks, pumps, a water treatment system, filtration equipment, heating, distillation and refining equipment, office trailers, laboratory trailers, and a large warehouse. The tanks and equipment contained varying amounts of oil, sludge, wastewater or mixtures of all three substances. Many of the tanks were observed to be leaking. Two of the large storage tanks had large holes in the roofs.

2) There were several large storage tanks on the facility which contain large volumes of liquid. These tanks, identified in Attachment 3, are referred to Storage Tank S1, Storage Tank S2, Storage Tank S3, Storage Tank S4 and Storage Tank S5. Excluding the S3 tank, which is being addressed in a separate order, the tanks contained a cumulative total of approximately 4 million gallons of waste water, 125,000 gallons of waste oil and 810,000 gallons of oily sludge.

3) There were also more than 1,100 drums present onsite. The majority of these drums were labeled "drained used oil filters". Upon inspection by EPA, these drums appeared to contain drained used oil filters as labeled.

4) There were approximately 40 drums present onsite which contained chemical product.

5) Fourteen roll-off bins, labeled as hazardous waste dirt bins, were present onsite.

6) Two trailers used as onsite laboratories contained various chemicals apparently used for testing of incoming oil.

5. On April 10, 1998, EPA issued a Unilateral Administrative Order to Chevron USA, requiring that Chevron clean up the S3 tank at the Site. Chevron has indicated that it intends to comply with the Order and is conducting the clean up.

6. Based on the large volumes of waste oil, sludge and oily wastewater present at the Site, cleanup of the Site will be costly and time consuming. EPA believes the cost of cleanup may exceed 10 million dollars.

7. The Respondents are persons or entities who have been identified as transporters or generators of waste oil, sludge or oily wastewater, in excess of 20,000 gallons, to the site between 1980 and 1997.

8. The sampling conducted by EPA's contractor, of the waste oil and oily wastewater in the S1, S2, S4, S5 and P2 tanks

confirmed the presence of Cadmium, Chromium, Copper, Lead, Mercury and Nickel.

9. The materials stored on site contain hazardous substances. The threat of a release of these substances is exacerbated by the aging and dilapidated condition of the tanks, the lack of a roof on the S4 tank, several holes in the roof of the S1 tank, seasonal rains, the lack of regular or routine inspection and maintenance, and the fact that PRC Patterson Inc., the site owner and operator has now abandoned the entire site.

#### V. CONCLUSIONS OF LAW

10. The PRC Patterson Superfund site is a "facility" as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9);

11. The Respondents, as identified in Attachment 1 are each "persons" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601 (21);

12. The Respondents, as generators and/or transporters to the site of waste oil, oily wastewater or sludge which contained hazardous substances, are each "liable parties" within the meaning of Section 107(a), 42 U.S.C. §9607(a), and are subject to this Amended Order under Section 106(a) of CERCLA, 42 U.S.C. §9606(a);

13. Cadmium, Chromium, Copper, Lead, Mercury and Nickel were detected in the waste oil, oily wastewater and sludge found at the Site, and each of these substances are each "hazardous substances" as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14);

14. The past, present or future migration of hazardous substances from the Site constitutes an imminent and substantial endangerment due to the actual or threatened "release" of hazardous substances, as the term "release" is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22);

#### **VI. DETERMINATIONS**

Based on the Findings of Fact and the Conclusions of Law, the Director of the Hazardous Waste Division, EPA Region IX, has made the following determinations:

15. That an actual or threatened release of hazardous substances from the Site/facility presents an imminent and substantial endangerment to the public health or welfare or the environment.

16. That conditions present at the Site/facility constitute a threat to public health or welfare or the environment based upon a consideration of the factors set forth in the NCP at 40 C.F.R. § 300.415(b), and that the actions required by this

Amended Order are necessary to protect the public health, welfare and the environment.

17. The actions required by this Amended Order, if properly performed, will be deemed consistent with the National Contingency Plan, 40 C.F.R. Part 300 ("NCP"), and are appropriate to protect the public health or welfare or the environment.

#### **VII. NOTICE TO THE STATE**

18. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. §9606(a), EPA has notified the State of California of the issuance of this Amended Order by providing the Department of Toxic Substances Control (DTSC) a copy of this Amended Order.

#### **VIII. AMENDED ORDER**

##### **Compliance History of UAO 98-12**

On August 12, 1998 EPA issued Unilateral Administrative Order Docket #98-12 ("the Original Order") to the respondents listed in Attachment 1 under the heading "Original Respondents". The effective date of the Original Order was August 17, 1998. A copy of the Original Order is affixed as Attachment 4.

A group of nineteen of the original respondents formed the Patterson Environmental Response Trust ("the Trust"). Attachment 1 indicates which of the Original Respondents are members of the Trust. The members of the Trust submitted notice of their

intention to comply with the Original Order. The Trust submitted a sampling and analysis plan, a health and safety plan and a tank and drum removal work plan pursuant to the requirements of Section VIII C, Paragraph 28 of the Original Order. The members of the Trust have been performing the removal activities required by the Original Order. This work is not yet complete.

Basis for Amendment of UAO 98-12

EPA has identified additional responsible parties in connection with the PRC Patterson site. EPA has also elected to expand the volumetric threshold for liability under this Amended Order to any entity that generated or transported in excess of 20,000 gallons of waste to this site between 1980 and 1987. These new entities are listed in Attachment 1 under the heading "New Respondents". In order to complete the response action at the site and in order to add the new parties identified as "New Respondents", EPA is issuing this Amended Order.

Based on the Findings of Fact, Conclusions of Law, and Determinations, EPA hereby orders all Respondents ("Original" and "New") to perform the specific work set forth in Section VIII, Subsection C, paragraph 28 of the Original Order under the direction of the EPA's On-Scene Coordinator, and to comply with all requirements of this Amended Order.

A. General Provisions:

19. All work required by this Amended Order shall be conducted in accordance with: the applicable portions of the EPA Action Memorandum, dated November 4, 1997; CERCLA; the NCP; EPA Region 9 "Guidance for Preparing Quality Assurance Project Plans for Superfund Remedial Projects" (EPA, November 1992); any final amended or superseding versions of such documents provided by EPA; other applicable EPA guidance documents; and any report, document or deliverable prepared by EPA because Respondents fail to comply with this Amended Order.

20. All plans, schedules, and other reports that require EPA's approval and are required to be submitted by the Respondents pursuant to this Amended Order and shall, upon approval by EPA, be incorporated into and enforceable under this Amended Order.

21. EPA will oversee Respondents' activities as specified in Section 104(a)(1) of CERCLA Section, 42 U.S.C. §9604(a)(1). Respondents will support EPA's initiation and implementation of activities needed to carry out its oversight responsibilities. Respondents shall also cooperate and coordinate the performance of all work required to be performed under this Amended Order with all other work being performed at the site, including work



performed by EPA, the State, another Respondent, or any other party performing work at the site with the approval of EPA.

22. Respondents shall undertake all actions required by this Amended Order in accordance with the requirements of all applicable local, state, and federal laws and regulations unless an exemption from such requirements is specifically provided under CERCLA or unless the Respondents obtain a variance or exemption from the appropriate governmental authority.

B. Selection of Contractor(s) and Subcontractor(s):

23. All work performed by or on behalf of Respondents pursuant to this Amended Order shall be performed by qualified individuals or contractors with expertise in hazardous waste site investigation or remediation, unless agreed otherwise by EPA. The Trust has selected Clayton Environmental Consultants as its contractor pursuant to paragraph 23 of the Original order and this selection has been approved by EPA.

24. If at any time, EPA disapproves of any person's or contractor's technical or work-experience qualifications, EPA will notify the Respondents in writing. Respondents shall, within five (5) working days of Respondents' receipt of EPA's written notice, notify EPA of the identity and qualifications of the replacement(s). Should EPA disapprove of the proposed

replacement(s), Respondents shall be deemed to have failed to comply with the Amended Order.

25. Respondents may propose to change the individual(s), contractor(s), or subcontractor(s) retained to direct and supervise the work required by this Amended Order. If Respondents wish to propose such a change, the Respondents shall notify EPA in writing of the name, title, and qualifications of the proposed individual(s), proposed contractor(s), or proposed subcontractor(s), and such individual(s), contractor(s) or subcontractor(s) shall be subject to approval by EPA in accordance with the terms of paragraphs 23 and 24 above. The naming of any replacement(s) by Respondents shall not extend any deadlines required by this Amended Order nor relieve the Respondents of any of their obligations to perform the work required by this Amended Order.

26. Respondents will notify EPA of their respective field activities at least one week before initiating them so that EPA may adequately schedule oversight tasks.

27. The Trust has previously submitted to EPA a certification that the Trust or its contractor(s) and subcontractor(s) have adequate insurance coverage or have indemnification for liabilities for injuries or damages to

persons or property which may result from the activities to be conducted by or on behalf of Respondents pursuant to the Original Order. Respondents shall ensure that such insurance or indemnification is maintained for the duration of performance of the work required by this Amended Order. Respondents shall ensure that the United States is named as an additional named insured on any such insurance policies.

C. Work and Deliverables:

28. WORK TO BE PERFORMED

a) The work requirements of paragraph 28 of the Original Order are hereby incorporated by reference into the Amended Order. All Respondents are ordered to perform the Work and make submittals and certifications as required in the Original Order within the time schedules specified therein, as previously modified in writing by the parties to the Original Order.

b) Clayton Environmental Consultants has been submitting monthly progress reports ("Progress Reports") on behalf of the Trust, pursuant to the Original Order, and that obligation shall continue and shall be applicable to all Respondents.

c) The Trust has submitted and EPA has approved a Sampling and Analysis Plan, a Health and Safety Plan and a Contingency Plan according to the terms of the Original Order.

d) The Trust has initiated the work described under the Sampling and Analysis Plan and that obligation shall continue and shall be applicable to all Respondents.

e) The Trust has submitted and EPA has approved a Tank and Drum Removal Work Plan according to the terms of the Original Order.

f) The Trust has initiated the work described in the Tank and Drum Removal Work Plan and the obligation to perform that work shall continue and shall be applicable to all Respondents.

g) All contractors, transporters and treatment, storage, disposal or recycling facilities used or proposed for use during this action are subject to EPA approval. Respondents must demonstrate to EPA's satisfaction that the waste is or is not a Listed or Characteristic Hazardous Waste as defined in 40 C.F.R. Part 261. All subsequent handling, transport and disposal shall be conducted in accordance with this waste classification.

h) The Trust is providing security for the site and that obligation shall continue and shall be applicable to all Respondents.

i) Any noncompliance with the Work to be performed or the schedules set forth within this section shall be considered a violation of this Amended Order.

29. All documents, including technical reports, and other correspondence to be submitted by the Respondents pursuant to this Amended Order, shall be sent by over-night mail to EPA's designated On Scene Coordinator or to such other addressees as EPA hereafter may designate in writing, and shall be deemed submitted on the date received by EPA. Respondents shall submit two (2) copies of each document to EPA, and two (2) copies to the DTSC.

30. EPA shall review, comment, and approve or disapprove each plan, report, or other deliverable submitted by Respondents. All EPA comments on draft deliverables shall be incorporated by the Respondents. EPA shall notify the Respondents in writing of EPA's approval or disapproval of a final deliverable. In the event of any disapproval, EPA shall specify the reasons for such disapproval, EPA's required modifications, and a time frame for submission of the revised report, document, or deliverable. If the modified report, document or deliverable is again disapproved by EPA, EPA shall first notify the Respondents of its disapproval of the resubmitted report, document, or deliverable, and then may draft its own report, document or deliverable and incorporate it as part of this Amended Order, may seek penalties from the

Respondents for failing to comply with this Amended Order, or may conduct the remaining work required by this Amended Order.

31. For purposes of this Amended Order, EPA's authorized representatives shall include, but not be limited to, DTSC and any consultants and contractors hired by EPA to oversee activities required by this Amended Order.

**IX. NOTICE OF INTENT TO COMPLY**

32. All New Respondents shall, by no later than December 28, 1999, provide written notice to EPA of New Respondents' irrevocable intent to comply with this Amended Order. This notice should be directed to EPA Assistant Regional Counsel Jeanne Elias at the address specified in this Amended Order. Failure to respond, or failure to agree to comply with this Amended Order, shall be deemed a refusal to comply with this Amended Order.

**X. OPPORTUNITY TO CONFER**

33. Respondents may attend a conference with the Chief of the Emergency Response Office in the Superfund Division, or whomever the Chief of the Emergency Response Office may designate. The conference shall occur at 10am on December 9, 1999 at EPA's Regional Office, 75 Hawthorne Street, San Francisco, California.

34. At the conference the Respondents may appear in person, or be represented by an attorney or other representative. If Respondents have questions about the conference, the Respondents shall contact Jeanne Elias, Assistant Regional Counsel, at (415) 744-1317.

35. The purpose and scope of any such conference held pursuant to this Amended Order shall be limited to issues involving the implementation of the response actions required by this Amended Order and the extent to which Respondents intend to comply with this Amended Order. At the conference Respondents may present any evidence, arguments or comment regarding this Amended Order, its applicability, any factual determinations upon which the Amended Order is based, the appropriateness of any action which the Respondents are Amended Ordered to take, or any other relevant and material issue. Any such evidence, arguments or comments should be reduced to writing and submitted to EPA within three (3) days following the conference. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this Amended Order. It does not give Respondents a right to seek review of this Amended Order, or to seek resolution of potential liability, and no official stenographic record of the conference will be made. In lieu of

attending the conference, a Respondent may submit any such evidence, arguments or comments writing within three (3) days following the date of the conference. Any such writing should be directed to Jeanne Elias, Assistant Regional Counsel, Mail Stop ORC-3, EPA 75 Hawthorne Street, San Francisco, CA 94105.

36. Respondents are hereby placed on notice that EPA will take any action which may be necessary in the opinion of EPA for the protection of public health and welfare and the environment, and Respondents may be liable under Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a), for the costs of those actions.

#### **XI. ENDANGERMENT AND EMERGENCY RESPONSE**

37. In the event of any action or occurrence during the performance of the work which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action(s) to prevent, abate, or minimize the threat, and shall immediately notify EPA's primary On-Scene Coordinator ("OSC"), or, if the primary OSC is unavailable, EPA's alternate OSC, as designated below in paragraph 41. If neither of these persons is available, Respondents shall notify the EPA Emergency Response Unit, Region 9, phone number (415) 744-2000. Respondents shall take such



action(s) in consultation with EPA's OSC and in accordance with all applicable provisions of this Amended Order, including but not limited to the Health and Safety Plan.

38. Nothing in the preceding paragraph shall be deemed to limit any authority of the United States to take, direct, or Amended Order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances at or from the Site.

#### **XII. MODIFICATION OF WORK REQUIRED**

39. In the event of unanticipated or changed circumstances at the Site, Respondents shall notify the EPA OSC by telephone within twenty-four (24) hours of discovery of the unanticipated or changed circumstances. This verbal notification shall be followed by written notification postmarked no later than three (3) days of discovery of the unanticipated or changed circumstances.

40. The Director of the Superfund Division, EPA Region IX, may determine that in addition to tasks addressed herein, additional work may be required to address the unanticipated or changed circumstances referred to in paragraph 39. Where consistent with Section 106(a) of CERCLA, the Director of the Superfund Division, EPA Region IX, may direct, as an amendment to this

Amended Order, that Respondents perform these response actions in addition to those required herein. Respondents shall implement the additional tasks which the Director of the Superfund Division, EPA Region IX, identifies. The additional work shall be completed according to the standards, specifications, and schedules set forth by the Director of the Superfund Division, EPA Region IX in any modifications to this Amended Order.

#### XIII. DESIGNATED PROJECT MANAGERS

41. EPA has designated Richard Martyn, an employee of Region IX of EPA, as its primary On-Scene Coordinator ("OSC") and designated representative at the Site, who shall have the authorities, duties, and responsibilities vested in the OSC by the NCP. This includes, but is not limited to, the authority to halt, modify, conduct, or direct any tasks required by this Amended Order or undertake any response actions (or portions of the response action) when conditions at the Site present or may present a threat to public health or welfare or the environment as set forth in the NCP. The Trust has previously designated Clayton Environmental Consultants as its Project Coordinator and Clayton has been responsible for overseeing Respondents' implementation of this Amended Order. This obligation shall continue and shall be applicable to all Respondents. To the

maximum extent possible, all oral communications between Respondents and EPA concerning the activities performed pursuant to this Amended Order shall be directed through EPA's OSC and Respondents' Project Coordinator. All documents, including progress and technical reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Amended Order, shall be delivered in accordance with Paragraphs 28-30 of the Original Order, as modified by the parties.

42. EPA and Respondents may change their respective OSC and Project Coordinator. Notification of such a change shall be made by notifying the other party in writing at least five (5) days prior to the change, except in the case of an emergency, in which case notification shall be made orally followed by written notification as soon as possible.

43. Consistent with the provisions of this Amended Order, the EPA designates John Jaros as an alternate OSC, in the event Richard Martyn is not present at the site or is otherwise unavailable. During such times, John Jaros shall have the authority vested in the On-Scene Coordinator ("OSC") by the NCP, as set forth in paragraph 41 above.

44. The absence of the EPA OSC from the Site shall not be cause for the stoppage of work. Nothing in this Amended Order shall limit the authority of the EPA OSC under federal law.

#### XIV. SITE ACCESS

45. Respondents shall permit EPA and its authorized representatives to have access at all times to the Site to monitor any activity conducted pursuant to this Amended Order and to conduct such tests or investigations as EPA deems necessary. Nothing in this Amended Order shall be deemed a limit upon EPA's authority under federal law to gain access to the Site.

46. The Trust has previously obtained access to the site. To the extent that Respondents require additional access to land other than land they own in carrying out the terms of this Amended Order, Respondents shall, within fifteen (15) days of the Effective Date of this Amended Order, obtain access for EPA, its contractors, oversight officials, or other authorized representatives; state oversight officials and state contractors; and Respondents or their authorized representatives. If Respondents fail to gain access within fifteen (15) days, they shall continue to use best efforts to obtain access until access is granted. For purposes of this paragraph, "best efforts" in-

cludes but is not limited to, seeking judicial assistance, providing indemnification, and/or the payment of money as consideration for access. If access is not provided within the time referenced above, EPA may obtain access under Sections 104(e) or 106(a) of CERCLA.

**XV. REIMBURSEMENT OF OVERSIGHT COSTS**

47. Respondents shall reimburse EPA, upon written demand, for all response costs incurred by the United States in overseeing Respondents' implementation of the requirements of this Amended Order. EPA may submit to Respondents on a periodic basis a bill for all response costs incurred by the United States with respect to this Amended Order. Respondents shall, within thirty (30) days of receipt of the bill, remit by cashiers or certified check for the amount of those costs made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency  
Region 9, Attn.: Superfund Accounting  
P.O. Box 360863M  
Pittsburgh, PA 15251

Respondents shall send a cover letter with any check and the letter shall identify the PRC Patterson Site by name and make reference to this Amended Order. Respondents shall send simultaneously to the EPA OSC notification of any amount paid, including a photocopy of the check.

48. Interest at the rate established under section 107(a) of CERCLA shall begin to accrue on the unpaid balance from the day of the original demand notwithstanding any dispute or objection to any portion of the costs.

**XVI. DELAY IN PERFORMANCE**

49. Any delay in performance of any requirement of this Amended Order that, in the EPA's judgment, is not properly justified by Respondents under the terms of this Section shall be considered a violation of this Amended Order. Any delay in performance of any requirement of this Amended Order shall not affect any other obligation of Respondents under the terms and conditions of this Amended Order.

50. Respondents, as applicable, shall notify EPA of any delay or anticipated delay in performing any requirement of this Amended Order. Such notification shall be made by telephone to EPA's primary OSC within twenty-four (24) hours after Respondents first knew or should have known that a delay might occur. The Respondents shall adopt all reasonable measures to avoid or minimize any such delay. Within three (3) days after notifying EPA by telephone, the Respondents shall provide written notification fully describing the nature of the delay, any justification for delay, any reason why the Respondents should

not be held strictly accountable for failing to comply with any relevant requirements of this Amended Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that will be taken to mitigate the effect of the delay. Increased costs or expenses associated with implementation of the activities called for in this Amended Order are not justifications for any delay in performance.

51. If Respondents are unable to perform any activity or submit any document within the time required under this Amended Order, the Respondents may, prior to the expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay. The submission of an extension request shall not itself affect or extend the time to perform any of Respondents' obligations under this Amended Order.

52. If EPA determines that good cause exists for an extension of time, it may grant a request made by Respondents pursuant to paragraph 51 above, and specify in writing to the Respondents the new schedule for completion of the activity and/or submission of the document for which the extension was requested.

#### **XVII. RECORD PRESERVATION**

53. Respondents shall maintain, during the pendency of this Amended Order, and for a minimum of five (5) years after EPA provides notice to Respondents that the work has been completed, a depository of the records and documents required to be prepared under this Amended Order. In addition, Respondents shall retain copies of the most recent version of all documents that relate to hazardous substances at the Site and that are in its possession or in the possession of its employees, agents, contractors, or attorneys. After this five-year period, Respondents shall notify EPA at least thirty (30) days before the documents are scheduled to be destroyed. If EPA so requests, Respondents shall provide these documents to EPA.

#### **XVIII. ENFORCEMENT AND RESERVATIONS**

54. EPA reserves the right to bring an action against Respondents under Section 107 of CERCLA, 42 U.S.C. §9607, for recovery of any response costs incurred by the United States related to this Amended Order and not reimbursed by Respondents. This reservation shall include but not be limited to past costs, direct costs, indirect costs, the costs of oversight, the costs of compiling the cost documentation to support oversight costs,



as well as accrued interest as provided in Section 107(a) of CERCLA, 42 U.S.C. §9607.

55. Notwithstanding any other provision of this Amended Order, at any time during the response action, EPA may perform its own studies, complete the response action (or any portion of this response action) and seek reimbursement from Respondents for its costs, or seek any other appropriate relief.

56. Nothing in this Amended Order shall preclude EPA from taking any additional enforcement action, including modification of this Amended Order or issuance of additional Amended Orders, or additional remedial or removal actions as EPA may deem necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA, 42 U.S.C. §9607(a), et seq., or any other applicable law. Respondents shall be liable under CERCLA Section 107(a), 42 U.S.C. §9607(a), for the costs of any such additional actions.

57. Notwithstanding any provision of this Amended Order, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, the Resource Conservation and Recovery Act, or any other applicable statutes or regulations.

58. Notwithstanding compliance with the terms of this Amended Order, including the completion of an EPA-approved response action, Respondents are not released from liability, if any, for any enforcement actions beyond the terms of this Amended Order taken by EPA.

59. EPA reserves the right to take any enforcement action pursuant to CERCLA or any other legal authority, including the right to seek injunctive relief, monetary penalties, reimbursement of response costs, and punitive damages for any violation of law or this Amended Order.

60. EPA expressly reserves all rights and defenses that it may have, including the EPA's right both to disapprove of work performed by Respondents and to request the Respondents perform tasks in addition to those detailed in both the Original and the Amended Order.

61. This Amended Order does not release Respondents, individually or collectively, from any claim, cause of action or demand in law or equity, including, but not limited to, any claim, cause of action, or demand which lawfully may be asserted by representatives of the United States or the State of California.

62. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by Respondents will be construed as relieving Respondents of their obligation to obtain such formal approval as may be required by this Amended Order.

#### **XIX. SEVERABILITY**

63. If any provision or authority of this Amended Order or the application of this Amended Order to any circumstance is held by a court to be invalid, the application of such provision to other circumstances and the remainder of this Amended Order shall not be affected thereby, and the remainder of this Amended Order shall remain in force.

#### **XX. DISCLAIMER**

64. The United States, by issuance of this Amended Order, assumes no liability for any injuries or damages to persons or property resulting from acts or omissions by Respondents, or their employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Amended Order. Neither EPA nor the United States shall be held as a party to any contract entered into by Respondents, or their employees, agents, successors, assigns, contractors, or

consultants in carrying out any action or activity pursuant to this Amended Order.

**XXI. PENALTIES FOR NONCOMPLIANCE**

65. Respondents are advised pursuant to Section 106(b) of CERCLA, 42 U.S.C. Section 9606(b), that willful violation or subsequent failure or refusal to comply with this Amended Order, or any portion thereof, may subject Respondents to a civil penalty of up to \$25,000 per day for each day in which such violation occurs, or such failure to comply continues. Failure to comply with this Amended Order, or any portion thereof, without sufficient cause may also subject Respondents to liability for punitive damages in an amount three times the amount of any cost incurred by the government as a result of the failure of Respondents to take proper action, pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. Section 9607(c)(3).

**XXII. EFFECTIVE DATE**

66. This Amended Order supercedes the Original Order, Docket No. 98-12 and is effective on November 30, 1999.

### XXIII. TERMINATION AND SATISFACTION

67. The provisions of this Amended Order shall be deemed satisfied upon Respondents' receipt of written notice from EPA that Respondents have demonstrated, to the satisfaction of EPA, that all of the terms of this Amended Order, including any additional tasks which EPA has determined to be necessary, have been completed.

Amended Unilateral Administrative Order 98-12A

IT IS SO ORDERED:

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

By: Keith A. Takata  
Keith A. Takata, Director  
Superfund Division  
Region 9

Date: 11-22-99

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List of Attachments

- Attachment 1 - List of Respondents
- Attachment 2 - Definitions
- Attachment 3 - Site map
- Attachment 4 - EPA Unilateral Administrative Order 98-12

## Attachment "2"

### Additional Definitions

"Action Memorandum" shall mean the Action Memorandum concurred on by the State of California, issued by the United States Environmental Protection Agency on November 4, 1997.

"Contractor" shall mean Respondents' contractor(s) and subcontractors contracted to perform the installation/construction, and operation and maintenance activities relating to any of the specific response actions at the Site Respondents are required to perform.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Amended Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

"Operation and Maintenance activities" shall include future operation and maintenance of all structures built or installed to contain the arsenic contamination at the Site until such time as EPA approves the cessation of such activities.

"Paragraph" shall mean a portion of this Amended Unilateral Order identified by an Arabic numeral.

"Parties" shall mean the United States, and all those entities identified as Respondents in Attachment 1 of this Amended Order.

"Section" shall mean a portion of this Amended Unilateral Order identified by a Roman numeral and including one or more paragraphs.